

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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UNITED STATES OF AMERICA	)	
	)	
v.	)	Crim. No. 05-10249
	)	
DANIELO TETZNER	)	
_____	)	

**DEFENDANT’S OBJECTIONS TO THE PRESENTENCE REPORT**

Defendant Danielo Tetzner submits the following objections to the Presentence Report:

¶ 32 - Probation scores 2 criminal history points for Mr. Tetzner’s 2003 conviction for illegal entry. While this calculation may be technically correct, it does not accurately reflect the sentence imposed in that case. Mr. Tetzner was denied bail and consequently spent 131 days incarcerated while the case was pending. The guideline range at sentencing was 0 to 6 months imprisonment. The imposition of a sentence of “time served” in these circumstances should not result in a criminal history point in excess of the one point that would be assessed if Mr. Tetzner had not been sentenced to any time.

¶ 34 - A similar inequity arises from the assessment of an additional 2 criminal history points because the instant offense was committed less than two years following Mr. Tetzner’s release from custody from the sentence imposed on his 2004 conviction. This assessment results from treating his being held without bail as the equivalent of a sentence. While this calculation may be technically correct, it fails to recognize that the imposition of a “time served” sentence was merely a reflection of the fact that Mr.

Tetzner was held while the case was pending, rather than the court's seeking to impose some additional penalty beyond deportation.

¶ 95 - A downward departure is warranted due to the inequitable impact of Mr. Tetzner's sole prior conviction for illegal reentry. This prior conviction's dual impact upon offense level and criminal history results in almost an additional year being added to the guideline range beyond the Criminal History Category I guideline range. Pursuant to § 4A1.3, a downward departure is warranted on the ground that Mr. Tetzner's criminal history category significantly overrepresents the seriousness of his criminal history. Mr. Tetzner has one prior conviction. His guideline range for that offense was 0 to 6 months, and he was sentenced to no incarceration beyond the 131 days he was held awaiting resolution of the case.

Danielo Tetzner  
By his Attorney,

/s/ Keith Halpern

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